UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

U.S.

v.

FRYKHOLM

No. 00 CR 50001-2

Nov. 13, 2002

MEMORANDUM OPINION AND ORDER

REINHARD, *J.*

On August 31, 2000, Linda Frykholm pleaded guilty in this court to wire fraud and money laundering. After Frykholm's sentencing, the court entered an amended judgment on January 24, 2001, which, among other things, forfeited Frykholm's interests in certain properties, including 1982 North Lake Shore Drive in Delevan, Walworth County, Wisconsin ("1982 Walworth Property"), to the United States. On January 10, 2001, third-party petitioner, Cotswold Trading Co. Ltd. ("Cotswold"), filed a petition under 21 U.S.C. § 853(n) claiming a first and prior interest over the government in the 1982 Walworth Property. Before the court are the government's motion to dismiss Cotswold's petition for lack of standing or failure to state a claim, filed pursuant to Federal Rule of Criminal Procedure 32.2(c)(1)(A), and Cotswold's motion for summary judgment, filed pursuant to Federal Rule of Criminal Procedure 32.2(c)(1)(B) and Federal Rule of Civil Procedure 56.

As Cotswold has clearly abandoned any claim that it has an interest in the 1982 Walworth Property based on § 853(n)(6)(A), the court grants that portion of the government's motion to dismiss. That leaves the main dispute between the

parties: whether, under § 853(n)(6)(B), Cotswold was a bona fide purchaser ("BFP") for value of a mortgage Frykholm granted to Cotswold on the 1982 Walworth Property in November 1999, two months before Frykholm was indicted in this case. Subsection (B) requires Cotswold to prove by a preponderance of the evidence that it was a BFP for value and was, at the time it obtained its mortgage interest in the 1982 Walworth Property, "reasonably without cause to believe that the property was subject to forfeiture." 21 U.S.C. § 853(n)(6)(B).

In response to Cotswold's motion for summary judgment on this claim, the government essentially argues questions of fact exist as to whether Cotswold was a BFP of the mortgage because it had knowledge of particular facts concerning its investments with Frykholm that would have put a reasonably prudent person on duty of inquiry, which, if prosecuted with ordinary diligence, would have led to actual notice of Frykholm's fraud and, ultimately, the government's interest in the 1982 Walworth Property. (Although the government cites a Seventh Circuit case applying Indiana law for this proposition, *see United States v. LaRosa,* 765 F.2d 693, 697 (7th Cir. 1985), Wisconsin law, which is the law to be applied in this case, *see United States v. Lee,* 232 F.3d 556, 560 (7th Cir. 2000) (claimant's interest in forfeited property determined in reference to the law of the state in which the property is located), *cert. denied,* 534 U.S. 940, 122 S.Ct. 315, 151 L.Ed.2d 235 (2001), is of like effect. *See New Dells Lumber Co. v. Pfiffner,* 216 Wis. 638, 258 N.W. 375, 378 (Wis. 1935); *Spangler v. Kittel,* 172 Wis. 583, 179 N.W. 758, 761 (Wis. 1920).) Specifically, the government points out the following facts should have acted as "warning flags" to put Cotswold on notice to conduct a further inquiry into Frykholm: (1) the nature and appearance of the investment offerings themselves, which promised 100% returns within a very short period of time (35, 15, and 10 days); (2) Frykholm's failure to pay the profits or return the principal,

despite Cotswold's repeated demands to do so; (3) the operation of Frykholm's businesses, such as the use of mail drop boxes for her business addresses; and, perhaps most significant to the government's theory, (4) letters that Cotswold's attorney, in his attempts to get Frykholm to pay up, sent to Frykholm in which he threatened to report her to "the authorities in both Illinois and Switzerland, as well as any other pertinent jurisdiction" and later threatened to turn her into the U.S. Attorney's Office. Based on these facts, had Cotswold conducted "even a cursory inquiry" into Frykholm's background, says the government, it would have soon discovered, among other things, (1) Frykholm's businesses did not in fact exist; (2) Frykholm had twice been convicted of fraud or theft-related offenses in an Illinois state court; (3) press coverage of those convictions and civil actions arising out of her fraudulent activities; (4) the state of Illinois had formally prohibited Frykholm from selling securities in Illinois; and (5) Frykholm bought the 1982 Walworth Property for a total of $2.28 million, paid in cash, all of which was in fact derived from the proceeds of the scheme to defraud that led to her indictment in this case.

In the court's opinion, however, the government expects too much of what a "cursory inquiry," let alone a reasonably diligent one, would produce. First of all, it is undisputed that Cotswold conducted a title search on the 1982 Walworth Property when it first obtained the mortgage in November 1999 — two months before January 2000, when Frykholm was indicted and the government filed its *lis pendens* notice on the property. That title search indicated a clear title on the property — no liens, encumbrances, or other defects. Although no other mortgages were listed on the title search, the court does not see how Cotswold could have reasonably inferred from this, as the government suggests, that Frykholm paid for the property entirely in cash *and* the cash was derived from her scheme to defraud. Speaking only of what Cotswold could have uncovered from its due diligence into

just the 1982 Walworth Property then, there is simply nothing that would have given Cotswold cause to think the property might be subject to forfeiture by the government.

But, assuming Cotswold truly suspected Frykholm might be criminally responsible for refusing to make good on its investments, as its attorney's letters to her may have indicated (the court of course draws all reasonable inferences in the government's favor, as it is Cotswold's motion for summary judgment), then it is perhaps arguable that Cotswold had a duty to inquire further into not just the 1982 Walworth Property, but into Frykholm's personal background as well. Even so, the court does not see how such a further inquiry, done in a reasonably diligent manner by a private company like Cotswold (as opposed to a full blown criminal investigation by the government), could have uncovered enough information such that Cotswold would have reasonable cause to believe the 1982 Walworth Property was subject to forfeiture — i.e., that Frykholm had specifically purchased the 1982 Walworth Property with the proceeds of her current scheme to defraud. In fact, the government has not introduced any evidence that Cotswold actually knew or reasonably could have learned that Frykholm was defrauding numerous other investors, had been doing so for at least the previous year, and had used their money to buy the 1982 Walworth Property in January 1999 — either on its own or because someone tipped Cotswold off about the FBI investigation going on at the time (November 1999) that eventually led to Frykholm's indictment. While it is certainly true Cotswold may have believed Frykholm was cheating *it,* there is nothing to show it knew she was at the same time engaging in a much more far ranging scheme to defraud *and* had used the proceeds of that scheme to buy the 1982 Walworth Property. Moreover, Frykholm's purchase of that property predated Cotswold's investments with Frykholm, so, even assuming Cotswold suspected Frykholm of defrauding it, Cotswold still would have no reason to believe Frykholm had used

its illegally obtained money to buy the property. In the end, a reasonably diligent background check into Frykholm[1] may have uncovered a somewhat sketchy past that might have given pause to a prudent investor contemplating an investment with her, but — and this is really the heart of the matter — it is simply unrealistic to expect Cotswold to have discovered that the 1982 Walworth Property in particular was bought with the proceeds of Frykholm's scheme to defraud and, therefore, was subject to forfeiture.

For the reasons stated above, the government's motion to dismiss is granted in part and denied in part and Cotswold's motion for summary judgment is granted.

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[1] This means something beyond what Cotswold actually did in this case. Before investing with Frykholm, Cotswold contacted the Better Business Bureau of Rockford. After investing with her, it hired a private detective agency to check into her. Neither of these inquiries revealed anything to alert Cotswold about Frykholm.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

LINDA K. FRYKHOLM,

Defendant.

Intervening Third-Party Claimant:
Cotswold Trading Company, Ltd., *Appellee.*

No. 03-1990

Argued Feb. 27, 2004
Decided March 25, 2004

Rehearing and Rehearing *En Banc* Denied June 7, 2004.

Robert P. Boyer, Jr. (argued), Asset Forfeiture & Money Laundering Sec., Washington, DC, for Plaintiff-Appellant.

James P. Devine, Williams & McCarthy, Jason H. Rock, Barrick, Switzer, Long, Balsley & Van Evera, Rockford, IL, Steven L. Kessler (argued), New York, NY, Robert A. Chapman, Chicago, IL, for Claimant-Appellee.

Before EASTERBROOK, MANION, and EVANS, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.*

Linda Frykholm must have the tongue of an angel, though she has the morals of a fiend. She persuaded people to invest $15 million in a get-rich-quick scheme, even though the promises she made were transparently too good to be true (100% return in a month) and she had no means to back her promises. Her only relevant credential was a 1994 conviction

for theft and forgery, which she did not tout; her "business address" was a mail drop; routine inquiry would have disclosed that the corporations through which she purported to do business did not exist and that Illinois securities officials had entered a stop order against her promotions. Her persuasiveness was augmented, however, by the staple ingredient of any Ponzi scheme: the first generation of investors was handsomely rewarded with money being raised from the next generation, and these ecstatic clients became her avid promoters. Yet collapse was inevitable. The system works only while each new generation of investors puts in at least twice as much as the last, and exponential growth cannot last: after a few doublings there aren't enough suckers left in the whole world. When Frykholm's scam imploded she had net receipts of about $10 million (having taken in $15 million and paid out $5 million), of which prosecutors have been able to locate some $4 million; the rest either was devoted to living the high life or has been hidden someplace from which Frykholm hopes to retrieve it after her release. (We affirmed her sentence, 144 months' imprisonment, in *United States v. Frykholm,* 267 F.3d 604 (7th Cir. 2001).) At least the asset recoveries are enough to return about 30% of the victims' losses.[1] Forfeiture of all assets traceable to the scam's proceeds is part of Frykholm's sentence, and the United States plans to use these assets to make restitution to victims, as 21 U.S.C. § 853(n)(1) permits.

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[1] The figures in the text might lead one to think that the payout would be closer to 40%, but that's not right. Frykholm paid out the $5 million against about $2.5 million in investment. That's why the first wave of investors was so enthusiastic. The unpaid investors chipped in about $12.5 million, and $4 million is available to them. If Cotswold prevails in this litigation, then about $1.8 million will be left to satisfy about $9 million in victims' claims.

Title to all forfeitable assets vests in the United States as soon as criminal proceeds are invested; a judgment of forfeiture just confirms that this has occurred. 21 U.S.C. § 853(c). Third parties who acquire interests in the property between the date of the act allowing forfeiture and the date of the judgment may be taken unawares, and § 853(c) shelters their interests to the extent that "the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section."

Cotswold Trading Company, one of Frykholm's victims, made a claim to some of her assets under § 853(c). Cotswold entrusted a total of $1.1 million to Frykholm. The initial investment of $100,000, made in March 1999, was to be doubled and repaid within 35 days. When Frykholm did not keep her promise, Cotswold decided to throw good money after bad. It invested another $1 million in exchange for a promise that Frykholm would deliver $2 million within 13 business days. That money came due in mid-July 1999. Again Frykholm did not pay, though she used several variations on "the check is in the mail". Cotswold then "reinvested" the promised but unpaid $2 million in exchange for Frykholm's promise to pay it $4 million within 15 banking days. That obligation came due in late August 1999. All Frykholm delivered was more promises.

Cotswold's lawyer and its principal owner protested by phone, fax, and letter; they threatened to file suit and report Frykholm to the U.S. Attorney. Frykholm continued making promises, but the wire transfers never materialized and her checks bounced. In November 1999 Frykholm and Cotswold executed a settlement and release. Frykholm gave Cotswold a promissory note for $2.2 million due in 100 days and secured by her interest in real estate on Lake Geneva, Wisconsin. For convenience we call this parcel, at 1982 North Lake Shore

Drive in Delavan, Walworth County, Wisconsin, "the Property." Frykholm had purchased the Property for $2,280,000 in January 1999. She paid with 17 checks written by other victims of the scam, so the Property was unencumbered until Frykholm gave Cotswold a mortgage. In January 2000 Frykholm was indicted, and the United States filed a *lis pendens* against the Property. Frykholm never paid the $2.2 million due on the note, and Cotswold now wants to enforce its security interest.

The Property is among the assets ordered forfeited to the United States as representing proceeds of the crime. Cotswold asserted that its interest is superior under § 853(c) and (n)(6)(B). The latter subsection says that a third party prevails if it "is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section". Cotswold contends that it is a bona fide purchaser for value under Wisconsin law, having given as "value" either the $1.1 million it invested or the $4 million Frykholm owed. The United States questions whether the holder of a security interest given in exchange for an antecedent debt can be a bona fide purchaser for value but has not pursued the point — sensibly so. See Wis. Stat. § 401.201(44)(b); see also *Swift v. Tyson,* 41 U.S. (16 Pet.) 1, 10 L.Ed. 865 (1842), overruled on other grounds by *Erie R.R. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Its principal response is instead that Cotswold either had "cause to believe that the property was subject to forfeiture" or would have acquired such cause by conducting a reasonable investigation. The district court, however, granted summary judgment to Cotswold, ruling that although it likely knew that Frykholm was perpetrating a fraud, it did not know that the Property represented traceable proceeds of that fraud, and thus did not know that the Property "was subject to forfeiture". 2002 U.S. Dist. LEXIS 22040 (N.D.Ill. Nov. 12, 2002). As a result of the district

court's decision, Cotswold gets 200% of the amount it invested (making a tidy profit from Frykholm's scam), while the other victims' recovery will fall to 15%, as the Property represents about half of Frykholm's traceable assets.

On appeal the United States concentrates its energy on contending that § 853(b)(6)(B) asks, not simply what a purchaser actually knows, but what it could have learned after investigation. It is hard to see in this statute an affirmative duty to inquire, but it may make sense to say that what Cotswold actually knew would have alerted any reasonable person to the possibility that real estate purchased by someone perpetrating a financial fraud, and unencumbered by any debt, represents funds skimmed from the venture. A person who has this much knowledge, and then averts his eyes lest he learn more, has actual knowledge via the ostrich inference often used in criminal prosecutions. See *United States v. Ramsey,* 785 F.2d 184 (7th Cir. 1986). A form of knowledge sufficient to support a conviction beyond a reasonable doubt under a statute requiring proof of scienter is more than sufficient to stave off summary judgment in civil litigation. It is hard to go beyond the ostrich inference in the direction of an investigation requirement; after all, the principal function of the bona-fide-purchaser doctrine is to protect buyers that did *not* investigate, and reading § 853(n)(6)(B) to require investigation as a condition of being an innocent purchaser would all but vitiate the statute's goal of protecting persons who meet state-law definitions of bona fide purchasers for value. See *United States v. Lavin,* 942 F.2d 177, 186 (3d Cir. 1991).

The possibility that Cotswold knew enough to permit an ostrich inference — and thus could be found to have *actual* knowledge that Frykholm bought the Property with the proceeds of her fraudulent scheme — prevents summary judgment in Cotswold's favor. The state of Cotswold's knowledge is the subject of a material dispute. A remand

for trial is unnecessary, however, because the record shows that Cotswold does not satisfy one state-law element of bona-fide-purchaser status.

In November 1999, when Cotswold exchanged its investment for the promissory note and mortgage, Frykholm was insolvent. She owed more than $20 million to the investors (all of whom had been promised a doubling, or in Cotswold's case quadrupling, of their funds) yet had only $4 million in available assets. Her insolvency made the transaction a fraudulent conveyance. Section 548(a)(1)(B) of the Bankruptcy Code (11 U.S.C. § 548(a)(1)(B)) provides a standard definition of a fraudulent conveyance: a transfer in which the debtor "(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation". That definition (which has a parallel in Wisconsin law, see Wis. Stat. § 242.05) fits this situation exactly. See also *In re Loyal Cheese Co.*, 969 F.2d 515, 518-19 (7th Cir. 1992) (noting the similarity between § 548(a)(1) and Wisconsin law). Frykholm was insolvent in November 1999 and did not receive reasonably equivalent value for the exchange; indeed she received no new value at all. Under the law of Wisconsin, a fraudulent conveyance transfers no rights; it prevents the transferee from achieving the status of a bona fide purchaser for value. See *Pippin v. Boyer,* 146 Wis. 69, 130 N.W. 872 (1911); *Rindskopf v. Myers,* 87 Wis. 80, 57 N.W. 967 (1894).

Neither side paid much attention to the effect of the fraudulent conveyance, likely because both sides are represented by forfeiture specialists and have focused on the language of § 853 and opinions interpreting that statute. Everything would have been clearer had the United States initiated an involuntary bankruptcy proceeding against Frykholm. That not only would have brought to the fore § 548 of the

Bankruptcy Code but also would have provided a superior way to marshal Frykholm's remaining assets and distribute them to her creditors. Although § 853(n)(1) allows the Attorney General to use forfeited assets for restitution, it does not create a comprehensive means of collecting and distributing assets. Bankruptcy would have made it pellucid that Cotswold cannot enjoy any priority over the other victims and cannot reap a profit while Frykholm's other creditors go begging. Moreover, bankruptcy would have enabled the trustee to recoup the sums distributed to the first generation of investors, who received $5 million or so against $2.5 million paid in. Those payments could have been reclaimed under the trustee's avoiding powers and made available to all of the bilked investors. It is too late to pursue the profits that Frykholm distributed to the first wave of investors in order to set up the later waves, but it is not too late to prevent the preferential distribution of any further assets to favored investors. Cotswold must stand in line with the rest.

REVERSED

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

June 7, 2004

Before

Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge
Hon. TERENCE T. EVANS, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

No. 03-1990 **v.**

LINDA K. FRYKHOLM,
Defendant.

Intervening Third-Party Claimant:
COTSWOLD TRADING COMPANY, LTD.
Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Western Division.

No. 00 CR 50001

Philip G. Reinhard, Judge.

Order

Appellee filed a petition for rehearing and rehearing en banc on April 26, 2004. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

21 U.S.C. § 853. Criminal forfeitures

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law —

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes —

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II of this chapter is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that —

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II of this chapter or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II of this chapter.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section —

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that —

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) Order to repatriate and deposit

(A) In general

Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate

any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply

Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p) of this section, shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the

court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to —

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (n) of this section, no party claiming an interest in property subject to forfeiture under this section may —

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in

the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall

consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that —

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant —

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II of this chapter involving the manufacture of amphetamine or methamphetamine, shall —

(1) order restitution as provided in sections 3612 and 3664 of Title 18;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of Title 18.